Docket Number:

RECEIVED
JAN 21 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

SUPREME COURT

79-6050

NANCY JEWELL CROSS,

Plaintiff and Appellee,

v.

MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY,

Defendants and Appellees.

JURISDICTIONAL STATEMENT

Appeal from Judgment of the Small Claims Court
Municipal Court of San Mateo County, California
Southern Judicial District, Redwood City Branch

NANCY JEWELL CROSS
1002 PALO ALTO WAY
MENLO PARK, CALIFORNIA 94025
(415) 854-4682

JURISDICTIONAL STATEMENT

Opinions delivered in courts below are none.

Jurisdiction of the Supreme Court is based on the following:

I brought the action by application to the Small Claims Court, a division of the Municipal Court of San Mateo County, California, Southern Judicial District, Redwood City Branch, on September 14, 1979, after considering the written instructions and also specifically inquiring orally of deputy clerk assigned, and in reliance thereon, as to jurisdiction of the Small Claims Court for recovery of $618.02 exacted from me for legitimized forms on which to collect 20-30 signatures for ballot listing for county supervisor at a special election held on Nov. 6, 1979, and expenses of recovery, given as $100 as of the date of suit filing. My application--the deputy clerk prepares the Claim--includes the statement "I claim U.S. Const. Amdts 1, 13, and 14 and Calif. Const. Article I against his (Marvin Church's) conduct and any statute he relies on, and that his conduct was extortion."

The matter came to hearing on Sept. 25, 1979, with Marvin Church appearing for himself and other defendants County of San Mateo and Board of Supervisors of San Mateo County, and myself appearing before Robert Wayne Trimble, visiting judge from Orland Justice Court, Glenn County. The judge refused to consider my claim of invalidity of statute and impost for nomination form toward ballot listing for county supervisor and announced his refusal, on my reiterated request for his consideration of United States Supreme Court decisions I invoked, to read them.

Notice of entry of Judgment dated Sept. 28, 1979 announced by xxx on a form, "Plaintiff take nothing from defendant on plaintiff's claim." Instructions to plaintiff announced absence of appeal to plaintiff. After receiving entry of Judgment notice I discovered that the Small Claims Court/State of California had misrepresented its actual jurisdiction, that the Small Claims Court had no jurisdiction to determine the merits but had entered a judgment against me on the merits from which I had no appeal in state courts, and that the court rendering the judgment had express authority to vacate a judgment or order obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect, in addition to what it has "inherently", I believed, to do so.

Within the time within which any appeal or motion to vacate judgment was timely, I filed a Motion to Vacate, Alter, and Amend Judgment and Declaration, and completed a form presented by deputy clerk of Notice of Motion to Vacate Judgment--on October 16, 1979. The clerk deferred filing the latter, stating that she had to get a day and time for hearing to complete it, from a judge considering his calendar, first. She said that she would then file the notice and serve it and the Motion I had prepared and left service copies of, on defendants and send me the same. Instead, a letter from the Clerk/Administrator of the Municipal Court, Russell M. Woods, dated October 23, 1979, informed me that the Court, not personally identified, refused to calendar my Motion to Vacate, Alter, and Amend Judgment.

To make express what is implied in the foregoing, the statute pursuant to which the proceeding was brought in the Small Claims/Municipal Court is its instructions or information for small claims plaintiffs and prospective plaintiffs, printed and oral by its agents and employees. See Appendix items A, B, D, E, and G. Lathrop v. Donohue (1961) 367 U.S. 820 at 827.

The date of the judgment sought to be reviewed and the time of its entry: I ask review of both the Judgment so denominated, dated and entered Sept. 28, 1979, and the letter dated October 23, 1979 as, also, a Judgment as well as "order respecting a rehearing". I filed Notice of Appeal to the Supreme Court of the United States, in the Small Claims Court on January 3, 1980.

Statutory provisions believed to confer on this Court jurisdiction of my appeal are 28 U.S.C. Sections 1257(2) and (3), 2101(c), and 2106.

Cases believed to sustain the jurisdiction include the following:

Thompson v. City of Louisville (1960) 362 US 199

Largent v. Texas (1943) 318 US 418

Norvell v. Apodaca (1974) 416 US 918

Lubin v. Panish (1974) 415 US 709 at 717-718

Bullock v. Carter (1972) 405 US 134 at 149

Harper v. Virginia Board of Elections (1966) 383 US 663 at 664, 666, 668

Harman v. Forssenius (1965) 380 US 528 at 542

Ludley v. Board of Supervisors of Louisiana State U. (1957) 15 F Supp 900 at 901, and 2nd col. 903-904; (CA 5 1958) 252 F2d 372, and (1958) 358 US 819.

Statutes whose validity is questioned are those which base defendants' collection of $618.02 for nominating form for county supervisor. In this action and events preceding they haven't asserted any independent of themselves, but Marvin Church has published his rules in broadside Instructions. See Appendix, Items I and J.

Other statutes whose validity is questioned involve the instructions and information for people approaching Small Claims Court, and the manner of disposition of causes, this one in particular. Their combination contributes to their invidiousness--the misrepresentation of jurisdiction, and denial to plaintiff of reconsideration in the same court as well as appeal, and the finality of decision for all state court purposes.

Questions Presented by the Appeal--

In consideration of the United States Constitution and Statutes, particularly United States Constitution, Article VI, Section 3, and Amendments I and XIV, in context of California Constitution, Article I, and determinations of California Supreme Court as well as United States Courts,

1. Whether exaction of $618.02 for nomination form for 20-30 signatures for ballot listing for county supervisor was unlawful, notwithstanding that presentation of 2473 valid signatures on legitimized forms for which no charge is made would have been acceptable in lieu at an earlier time but not at the time when $618.02 was latest payable, and traversed the rights, privileges, and immunities of plaintiff and others to representative government, equal protection of the laws, and other guarantees of United States Constitution.

2. Whether the Judgment(s) of the Small Claims/Municipal Court should be set aside without prejudice, time and otherwise to plaintiff's pursuing claim here involved in another court, if need be, with expenses of this action to be paid by defendants.

3. Whether the State of California is by the United States Constitution obliged to, and has, provided practical and reasonable access to persons to its general county office of county supervisor, free of burden on the less affluent, consistently with United States Constitution, Amendments I and XIV.

4. Whether a State may burden the less affluent or anyone with securing thousands or hundreds of signatures indifferently to whether they are secured by a candidate personally or by paid agents, each sheet thereof being required to be certified by one person, as the sole alternative to a fee for nomination form requiring 20-30 max. signatures, consistently with the United States Constitution and valid government purpose.

5. Whether denial of appeal coupled with refusal of decision of a motion to vacate in the same Small Claims/Municipal court in action to review taking of $618.02 paid under protest to the clerk of the Superior Court, particularly in view of 57 Calif. Attorney General Opinions (Dec. 5, 1974) 635 at 636, denied plaintiff rights by the United States Constitution to due process of law and equal protection of the laws, with scienter, warranting exemplary damages from defendants.

6. Whether above and beyond the statutory statement of Small Claims/Municipal Court jurisdiction in relation hereto, refusal of the Small Claims/Justice Court Judge to read decisions of the United States Supreme Court and to consider whether the fee for nomination form was valid, denied plaintiff due process of law under the Fourteenth Amendment to the U.S. Constitution and indicates his judgment should be reversed.

7. Whether these and other errors justify the Supreme Court in reversing the Judgments sought reviewed, and instructing relief to plaintiff.

The facts material to consideration of the questions presented are efficiently for the most part presented on pages 1 and 2 hereof and in the Appendix, indexed following. As shown in Item C, the fee for nomination form was paid under protest of defendants' record, and defendants were fully informed thereby and of the basis at law thereof.

Federal claims were made in my application to the Small Claims Court and in my Motion to Vacate, Alter, and Amend Judgment, on pages 1 and 2. Appendix Item F. Surprise prevented my raising my federal claim concerning refusal of calendaring of that motion, without access to the court of decision.

The federal questions, I believe it will sufficiently appear by the foregoing, are substantial. Process by which persons pursuing lowest, least expensive to themselves and society, forums may have equal protection of the laws and due process of law consistently with decisions of higher courts is important in promoting economy in government and respect for the law. The State should not be permitted to exempt itself from requisites of fairness and consistency of law merely by Small Claims Court set-up. Decisions of the State's officers and courts to be reconciled with the decision of the Small Claims Court here include:

Mills v. Superior Court (1969) 2 CA3d 214, 82 Cal Rptr 469

Brooks v. Small Claims Court (1973) 8 C3d 661, Supp., 105 Cal Rptr 785

Cowles v. City of Oakland (1959) 167 CA2d Supp. 835, 334 P2d 1069

Donovan v. Brown (1974) 11 C3d 571 at 573

Knoll v. Davidson (1974) 12 C3d 335 at 349

Coe v. Davidson (1974) 43 CA3d 170

Green v. Layton (1975) 14 C3d 922 at 928

57 Calif. Atty Gen. Ops. (1974) 635 at 636

I ask the Supreme Court to recognize jurisdiction of this appeal, to reverse the Judgment(s) asked reviewed, and to instruct appropriate relief for plaintiff appellant.

The items in the Appendix identified on the next page are adopted here by this reference for all parts of this Jurisdictional Statement, appropriately.

Nancy Jewell Cross

Nancy Jewell Cross

APPENDIX TO JURISDICTIONAL STATEMENT

Item		Pages
A	Information for the Filing of A Small Claims Action and questionnaire completed.	1
B	Claim of Plaintiff (prepared by deputy clerk), filed September 14, 1979, Copy for Plaintiff (Copy for Defendant has different instructions.). Case # SC 60654.	1
C	Exhibits to Complaint and Notice Thereof, filed 9-14-79	46
D	Notice of Entry of Judgment (including Judgment), dated Sept. 28, 1979.	2
E	Notice of Motion to Vacate Judgment, dated Oct. 16, 1979	2
F	Motion to Vacate, Alter, and Amend Judgment and Declaration, filed Oct. 16, 1979.	3
G	Letter to Nancy Jewell Cross from Russell M. Woods, Clerk/Administrator refusing calendaring of above Motion, dated October 23, 1979.	1
H	Notice of Appeal to the Supreme Court of the United States, filed Jan. 3, 1980.	1
I	Instructions for Circulation of Petitions-in-Lieu, from Marvin Church, said Clerk-Recorder, County of San Mateo, undated.	2
J	Instructions to Candidates Re: Circulation of Nomination Papers, from Marvin Church, undated.	2
K	Notice of rejection of claim by county board of supervisors, dated Sept. 5, 1979.	1
L	Special Election for San Mateo County Supervisor, Nov. 6, 1979, chart of data on six candidacies.	1
M	California Code of Civil Procedure, Chapter 5 - Municipal and Justice Courts, Sections 86 and 116.2, and reference to Section 187.	1
N	USSCt Docket 78-6581, Committee Moving A Full Spectrum Ballot, Nancy Jewell Cross, and Frank De Sio, etc. v. Marvin Church, Jurisdictional Statement and appended documents, by reference. Motion therefor, herewith.	-

MOTION AND AFFIDAVIT TO PROCEED PURSUANT TO 28 U.S.C. §1915 AND SUPREME COURT RULE 53, FOR LEAVE TO USE PREVIOUS RECORD, AND VERIFICATION OF JURISDICTIONAL STATEMENT

RECEIVED
JAN 21 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Nancy Jewell Cross moves the Supreme Court to file the Jurisdictional Statement herewith and to permit her to use by reference for the Court's consideration the previous record in the Supreme Court, including but not limited to that in its file 78-6581, Committee Moving A Full Spectrum Ballot et al. v. Marvin Church, docketed April 25, 1979 and to proceed in this application for review without payment of docket fee and costs and upon typewritten records and papers.

In support of this motion I respectfully allege:

1. I am unable to pay fees for filing or docketing, printing of records and papers, and/or to give security therefor and for costs;

2. I present my Jurisdictional Statement in good faith and belief that I am entitled to redress.

3. Acceptance of use of the previous record by citation will avoid restatement of what is familiar to the Supreme Court and promote accurate understanding of relevant election laws and court action in California.

4. The nature of this application: appeal/petition for certiorari, is: On Sept. 14, 1979 pursuant to published written instructions to persons contemplating actions in Small Claims Court to effect of jurisdiction of that court to determine the matter, I brought an action to recover $618.02 extorted by Marvin Church, acting as county clerk of San Mateo County, for issuing to me legitimized forms on which to collect 20-30 signatures for ballot listing for office of county supervisor at a special election held Nov. 6, 1979. The Small Claims Court lacked actual jurisdiction, refused to read decisions of the U.S. Supreme Court, and refused to consider my timely-filed Motion to Vacate, Alter, and Amend Judgment. I claimed the statute asserted to justify the $618.02 impost is invalid by reason of repugnancy to the U.S. Constitution, Amendments I, XIII, and XIV.

5. Statements of fact above and in my Jurisdictional Statement which involve matters reasonably within my personal knowledge are true, and other statements of fact I believe to be true.

Nancy Jewell Cross

STATE OF CALIFORNIA :
COUNTY OF SANTA CLARA : ss.

Nancy Jewell Cross

Subscribed and sworn to before me this 18th day of January 1980.

Ruth King

OFFICIAL SEAL
RUTH KING
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My comm. expires JAN 9, 1981

305 Lytton Ave., Palo Alto, CA 94301

SMALL CLAIMS DIVISION OF THE MUNICIPAL COURT OF CALIFORNIA
COUNTY OF SAN MATEO, SOUTHERN JUDICIAL DISTRICT

(xx) REDWOOD CITY BRANCH
750 Middlefield Road
Redwood City, CA. 94063
364-5600, Ext. 2443

( ) SAN MATEO BRANCH
800 N. Humboldt Street
San Mateo, CA. 94401
573-2605

D

CASE NO. S.C. 60654

PLAINTIFF (Name and address):
NANCY JEWELL CROSS
1902 Palo Alto Way
Menlo Park, Ca. 94025

DEFENDANT (Name and address of each)
MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, AND COUNTY OF SAN MATEO
401 Marshall Street
Redwood City, Ca. 94063

NOTICE OF ENTRY OF JUDGMENT

JUDGMENT WAS ENTERED AS INDICATED BELOW.

1. ☐ Plaintiff recover from defendant (Name):
$. . . . . principal and: $ . . . . . costs on plaintiff's claim.
2. XXX Plaintiff take nothing from defendant on plaintiff's claim.
3. ☐ Defendant recover from plaintiff: $ . . . . . principal and: $ . . . . . costs on defendant's claim.
4. ☐ Defendant take nothing from plaintiff on defendant's claim.
5. ☐ Possession of the premises located at: . . . . . is restored to plaintiff.
6. ☐ (Other):
7. ☐ Date judgment was entered: . . . . . .

RUSSELL M. WOODS, Clerk-Administrator
By NORMA ESTES Deputy

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a copy of the foregoing was mailed first class, postage prepaid, at (Place): . . . . . Redwood City, ... California in a sealed envelope addressed to the parties as shown above, and that the mailing of the foregoing and execution of this certificate occurred (Date): . . . . September 28, 1979

By NORMA ESTES Deputy

NOTICE TO PARTIES: SEE REVERSE FOR IMPORTANT INFORMATION

3700-93 (Continued on reverse)

Form approved by the Judicial Council of California Effective January 1, 1979

NOTICE OF ENTRY OF JUDGMENT

CCP 117.8. Cal. Rule of Court 152

SMALL CLAIMS DIVISION OF THE MUNICIPAL COURT OF CALIFORNIA
COUNTY OF SAN MATEO, SOUTHERN JUDICIAL DISTRICT

☒ REDWOOD CITY BRANCH
750 Middlefield Rd.
Redwood City, CA. 94063
364-5600, Ext. 2443

☐ SAN MATEO BRANCH
800 North Humboldt St.
San Mateo, CA. 94401
573-2605

CASE NO. SC [illegible]

CLAIM OF PLAINTIFF

NANCY JEWELL CROSS

vs

MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, AND COUNTY OF SAN MATEO

Plaintiff(s)

Defendant(s)

1. Defendant(s) is indebted to plaintiff(s) in the sum of $ 718.02 (as of 9-14-79) not including court costs, for having extorted $10.02 for issuing nomination papers for county supervisor, asserted by statute adjudicated unconstitutional, plus $100 expenses.
2. Plaintiff(s) has demanded that defendant(s) pay this sum and it has not been paid. U.S. Constitution Amendment 1, 13 and 14 claimed.
3. Plaintiff(s) resides or does business at 1902 Palo Alto Way, Menlo Park, CA. 94025
4. The defendant(s) resides or does business at Marvin Church, 401 Marshall St., Redwood City, CA. 94063
Board of Supervisors, Eileen Kenyon White, Clerk, 401 Marshall St., Redwood City, CA. 94063
County of San Mateo, Eileen Kenyon White, Clerk of Board of Supervisors, 401 Marshall St., Redwood City, CA. 94063
5. This court is the proper court for the hearing because:
   a. ☒ At least one defendant now resides or a corporate defendant does business in this judicial district;
   b. ☐ Injury to person or damage to personal property occurred in this judicial district;
   c. ☐ Defendant(s) entered into or signed in this judicial district a contract not involving a retail installment account or an auto finance sale;
   d. ☐ The obligation was to be performed in this judicial district on a contract not involving a retail installment account, an auto. finance sale, or the furnishing of goods, services or loans intended primarily for personal, family, or household use;
   e. ☐ Defendant(s) resides or a corporate defendant did business in this judicial district at the time the contract was entered into for the furnishing of goods, services or loans intended primarily for personal, family, or household use, and not involving a retail installment or an auto finance sale;
   f. ☐ This action is on a retail installment account or contract (CC 1812.10); specify:
   g. ☐ This action is on a motor vehicle finance sale (CC 2984.4); specify:
6. Plaintiff(s) understand that:
   a. Although I may consult an attorney, I cannot be represented by an attorney at the trial.
   b. I must appear at the time and place for trial and have with me witnesses and evidence (such as books, papers, receipts, and exhibits) to prove my claim.
   c. I have no right to appeal from a judgment on my claim, but may appeal a Claim of Defendant if judgment is entered against me.

I declare (certify) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on September 14, 1979 at Redwood City, California.

Nancy Jewell Cross

Signature of Plaintiff(s)

**) Please check Court calendar.
Trial scheduled in Dept. C

ORDER

(***)

TO DEFENDANT: If you wish to oppose plaintiff's claim, you are directed to appear and answer the within and foregoing claim at the SMALL CLAIMS COURT 750 Middlefield Rd., Redwood City on TUESDAY SEPTEMBER 25, 1979 at 9:30 A. M. and to have with you then and there all books, papers and witnesses needed by you to establish your defense to said claim. IF YOU DO NOT APPEAR, THE COURT MAY AWARD PLAINTIFF THE AMOUNT FOUND TO BE DUE UPON PLAINTIFF'S CLAIM AND ALSO COSTS OF THE ACTION INCLUDING COSTS OF SERVICE OF THIS ORDER, WHICH COULD RESULT IN GARNISHMENT OF YOUR WAGES AND TAKING OF YOUR MONEY OR PROPERTY. (See reverse side of this sheet for additional information.)

Dated: September 14, 1979 CLERK OF THE COURT, by Vernalee Howard Deputy.

DATE ____ Hearing reset for ____ at ____ M.
DATE ____ Hearing reset for ____ at ____ M.
DATE ____ Hearing reset for ____ at ____ M.

COPY FOR PLAINTIFF

NOTE: If case is settled before trial, plaintiff must fill out Dismissal and mail it to-
Small Claims Division, Municipal Court, ☒ 750 Middlefield Road, Redwood City, CA 94063
☐ 800 N. Humboldt Street, San Mateo, CA 94401

CASE NO. SC [illegible]

REQUEST FOR DISMISSAL

Plaintiff(s) vs. Defendant(s)

To the clerk of the above-entitled court:
You are requested to dismiss the above-entitled action.

Dated

Plaintiff(s)

SMALL CLAIMS DIVISION OF THE MUNICIPAL COURT OF CALIFORNIA
COUNTY OF SAN MATEO, SOUTHERN JUDICIAL DISTRICT

(x) REDWOOD CITY BRANCH
750 Middlefield Road
Redwood City, CA. 94063

( ) SAN MATEO BRANCH
800 N. Humboldt Street
San Mateo, CA. 94401

CASE NO. S.C. 60654

PLAINTIFF (Name and address)
NANCY JEWELL CROSS
1902 Palo Alto Way
Menlo Park, CA. 94025

DEFENDANT (Name and address of each)
MARVIN CHURCH
BOARD OF SUPERVISORS OF SAN MATEO COUNTY
COUNTY OF SAN MATEO
401 Marshall St.
Redwood City, CA. 94063

NOTICE OF MOTION TO VACATE JUDGMENT AND DECLARATION

NOTICE OF MOTION TO VACATE JUDGMENT

1. To (Name): MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY AND COUNTY OF SAN MATEO
2. A hearing will be held in the above-named court at which I will ask the court to set aside the judgment entered against me in this case. If you wish to oppose the motion you should appear at the court on

(Date):	at (Time):	In ☐ Dept.:	☐ Div.:	☐ Room:

3. This motion will be made on the grounds set forth below and will be based on this notice of motion and declaration, the records on file with the court, and any oral and documentary evidence that may be presented at the hearing.

DECLARATION FOR MOTION TO VACATE JUDGMENT

4. Judgment was entered against me in the above-entitled case on (Date): Sept. 28, 1979.
5. This motion to vacate the judgment entered against me in this case is made on the following ground (reason):
   (a) ☐ I was not properly served with the claim. I first learned of the entry of judgment against me on (Date): ..... as follows (Specify facts):

   (b) ☑ Other (Specify facts): See accompanying filed paper.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): Oct. 16, 1979 at (Place): Redwood City, California.

(Type or print name) Nancy Jewell Cross (Signature)

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required. A COPY OF THIS NOTICE MUST BE SERVED ON THE PERSON NAMED IN ITEM ONE.

Form approved by the Judicial Council of California Effective January 1, 1979

NOTICE OF MOTION TO VACATE JUDGMENT AND DECLARATION

CCP 117.8 CCP 657

COUNTY OF SAN MATEO

I.

INSTRUCTIONS FOR CIRCULATION OF PETITIONS-IN-LIEU OF FILING FEES (E.C. Sec. 6555)
SPECIAL VACANCY ELECTION, 4TH SUPERVISORIAL DISTRICT, NOVEMBER 6, 1979

ability of Forms: The candidate or his representative (designated in writing) may obtain from the County Clerk. As official filing forms, all petition sections must be provided e County Clerk, Room A, Hall of Justice & Records, Redwood City, and will be available 1, 1979, without charge.

for Filing: Candidates for County Supervisor must present the Petitions-in-Lieu of Filing t the time of issuance of Nomination Papers, but in no event may a Petition-in-Lieu be later than 15 days prior to the close of the nomination period, July 26, 1979.

candidate is cautioned that he will still be required to circulate and file Nomination rs and that signatures on Nomination Papers shall be in addition to the signatures to Petition-in-Lieu of Filing Fees.

e nomination forms cannot be issued prior to July 16, 1979, Petitions-in-Lieu of Filing Fee be left with the County Clerk prior to this date for preliminary processing. A candidate submit the appropriate number of signatures to cover all or any pro-rata portion of the ing fee. However, when a candidate makes partial payment together with signatures, filing in total or partial is not refundable. The candidate or his authorized representative t make the petition filings and if it is not possible to file all sections at the same time, is requested that at least 25 sections be submitted at any one time as an aid in office tine of recording and checking signatures submitted.

o May Circulate: The candidate or a circulator designated by the candidate, who is a istered voter, may circulate the Petitions. All signatures on a petition section must be tained by the same circulator and the circulator must complete the Certificate of Circulator each section he/she circulates.

o May Sign: Any registered voter may sign a Petition-in-Lieu for any candidate for whom /she is eligible to vote.

ters signing a Petition-in-Lieu must also print their names and must personally affix their esidence addresses. Ditto marks are not permitted when successive signers have the same ddress and will void any signature which they follow.

eneral Instructions: Candidate, or his designated representative, should see that each ection has been filled in with name, office and the appropriate election.

irculator must complete and sign certificate on the petition form, including dates between hich signatures were obtained and return petition to the candidate or his designated repre-entative.

pon submission of the minimum number of signatures, or combination of signatures and pro-rata ortion of filing fee, Nomination Papers shall be issued provisionally, subject to checking he validity of the petition signatures. Within 10 days after receipt of a petition the County lerk shall notify the candidate of any deficiency. The candidate shall then, prior to the lose of the nomination period, either submit a supplemental petition or pay a pro-rata portion of the filing fee to cover the deficiency in order to make the nomination effective.

The Filing Fee and number of signatures in lieu of filing fees are indicated below:

Office: Supervisor Filing Fee: $ 588.59 Date: 6-14-79

Required number of signatures in lieu of Filing Fee: 2,355

Note: Filing Fee and subsequent number of required signatures may be subject to change due to possible salary adjustments.

SUMMARY

AVAILABILITY OF FORMS

WHERE:
. County Clerk, Room A, Hall of Justice & Records, Redwood City

WHEN:
. June 1, 1979 through July 26, 1979 (deadline to file)

(continued on other side)

J

MARVIN CHURCH
COUNTY CLERK-RECORDER
COUNTY OF SAN MATEO

NSTRUCTIONS TO CANDIDATES RE: CIRCULATION OF NOMINATION PAPERS
SPECIAL VACANCY ELECTION, 4TH SUPERVISORIAL DISTRICT, NOVEMBER 6, 1979

nclosed herewith are forms required by State Law which make up the Nomination Documents or your candidacy:

1) DECLARATION OF CANDIDACY*
2) CERTIFICATE OF APPOINTMENT OF CIRCULATORS
3) NOMINATION PAPERS
4) CANDIDATE'S STATEMENT
5) DISCLOSURE OF ECONOMIC INTERESTS STATEMENT

Please read these instructions so that your papers will comply with the requirements of State Law governing the filing of Nomination Documents. Should you have any further questions after reading the instructions, please do not hesitate to make inquiry of the County Clerk.

1. DECLARATION OF CANDIDACY
Elections Code Section 6490.5 provides that a candidate shall not remove a Declaration of Candidacy form from the Office of the County Clerk, and the County Clerk shall require all candidates filing a Declaration of Candidacy to execute the Declaration in the Office of the County Clerk.

The following must be provided on the Declaration of Candidacy form:
Candidate's name
The way the candidate's name is shown on the Declaration is the way it will appear on the ballot. Candidate may use a nickname provided his or her given name or initials are shown. The nickname must be in parentheses or quote marks. Candidate may use only his or her initials of the given name and his or her last name; may omit the middle name or use a contraction of the given name.

Occupational designation
The candidate may use words designating the elected city, county, district, state or federal office which the candidate holds at the time of filing Nomination Papers or no more than three words designating the principal professions, vocations or occupations of the candidat If no occupation is desired, the word "None" must be written on the form.

Oath of Office
Included in the Declaration of Candidacy is the Oath of Office as set forth in Section 3, Article XX of the State Constitution with respect to any office. The Oath may be subscribe to before a Notary Public or the Oath may be administered to the candidate in the Office of the County Clerk at the time Nomination Papers are filed. No fee shall be charged by any person before whom the Oath is taken.

2. CERTIFICATE OF APPOINTMENT OF CIRCULATORS
The candidate must complete the Certificate of Appointment of Circulators. The candidate may circulate his or her own Nomination Papers or appoint one or more persons to circulate them and serve as Circulators. The Appointed Circulator must be properly registered as a voter in the district or political subdivision in which the candidate is to be voted on. All signatures on a single Nomination Paper must be witnessed by the same Circulator.

*Please Note: *The Declaration of Candidacy form cannot be taken from the Office of the County Clerk. Please allow sufficient time for the execution of the Declaration in the Clerk's Office.*

(over)

oard of Supervisors

BOARD OF SUPERVISORS
EDWARD J. BACCIOCCO, JR
JAMES V. FITZGERALD
FRED LYON
WILLIAM H. ROYER
JOHN M. WARD

Eileen Kenyon White
EXECUTIVE OFFICER

COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER · REDWOOD CITY · CALIFORNIA 94063

(415) 364-5600 EXT. 4566

September 5, 1979

Nancy Jewell Cross
1902 Palo Alto Way
Menlo Park, CA 94025

Notice is hereby given that your claim, which was received in the office of the Board of Supervisors on August 17, 1979, was presented to the Board of Supervisors on September 4, 1979, and was rejected in its entirety by said Board.

WARNING: Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Eileen Kenyon White
EILEEN KENYON WHITE
Executive Officer

Enclosure: Copy of District Attorney's report

cc: District Attorney
Director General Services
Keith A. Hillegass Co., Inc.

SPECIAL ELECTION FOR SAN MATEO COUNTY SUPERVISOR - Nov. 6, 1979

Candidate	Disclosed Campaign Expenditures Total	Disclosed Campaign Expenditures - Fee for Nom. Form	Votes Nov. 6	On taxpaid salary during or up to near candidacy?	Votes/$1 Expended Incl. Fee	Votes/$1 Expended W/o Fee	Incl. Fee Expenditure Per Vote	W/o Fee Expenditure Per Vote	Valid Signatures In Lieu of Fee for Nom. Form	Fee Req'd for Nom. Form
CROSS	$848.02	$230.00	4241	No	5.00	18.44	19¢	5¢	0	$618.02
COOPER	$894.90	$666.38	3194	Yes	3.57	4.79	28¢	21¢	1612	$228.52
BURTON	$2,353.45	$1,787.93	8215	Yes	3.49	4.59	29¢	22¢	210	$565.52
BOXLEY	$4,786.13	$4,700.11	4556	Yes	.74	.97	$1.05	$1.03	2128	$86.02
BIAGI	$59,349.63	$59,311.86	32,486	Yes	.55	.55-	$1.83	$1.83	2321	$37.77
GREGORIO	$67,879.93	$67,879.93	47,349	Yes	.70	.70	$1.43	$1.43	2473 counted	0.00

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CALIFORNIA CODE OF CIVIL PROCEDURE

CHAPTER 5. MUNICIPAL COURTS AND JUSTICE COURTS

ARTICLE 1. GENERAL PROVISIONS

§ 86. Jurisdiction

(a) Original jurisdiction

(a) Each municipal and justice court shall have original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to * * * fifteen thousand dollars * * * ($15,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed * * * fifteen thousand dollars * * * ($15,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed * * * fifteen thousand dollars * * * ($15,000).

(3) In actions to cancel or rescind a contract when such relief is sought in connection with an action to recover money not exceeding * * * fifteen thousand dollars * * * ($15,000) or property of a value not exceeding * * * fifteen thousand dollars * * * ($15,000), paid or delivered under, or in consideration of, such contract; in actions to revise a contract where such relief is sought in an action upon such contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer where the rental value is six hundred dollars ($600) or less per month and the whole amount of damages claimed is * * * fifteen thousand dollars * * * ($15,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of such liens is * * * fifteen thousand dollars * * * ($15,000) or less.

(6) In all actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 1181) of Title 4 of Part 3 of this code where the amount of such liens is * * * fifteen thousand dollars * * * ($15,000) or less; provided, that where an action to enforce any such lien is pending in a municipal or justice court, and affects property which is also affected by a similar action pending in a superior court, or where the total amount of such liens sought to be foreclosed against the same property by action or actions in a municipal or justice court aggregates an amount in excess of * * * fifteen thousand dollars * * * ($15,000) the municipal or justice court in which any such action, or actions, is, or are, pending, upon motion of any interested party, shall order such action or actions pending therein transferred to the proper superior court. Upon the making of such order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) In actions for declaratory relief when brought by way of cross-complaint as to a right * * * or indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding otherwise within the jurisdiction of the municipal or justice court.

(8) To issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction; to appoint a receiver in aid of execution as provided in subdivision 4 of Section 564; to charge the interest of a debtor partner with payment of the unsatisfied amount of any judgment rendered by such court in the manner provided in Section 15028 of the Corporations Code, or any amendment thereof, and in such cases to appoint a receiver and to make any order or perform any act mentioned or authorized in such section; in proceedings under Section 680, or any amendments thereof, to determine title to personal property seized in an action pending in, or upon execution issued by, such court.

(9) In all actions under Section 720 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding * * * fifteen thousand dollars * * * ($15,000) or the debt denied does not exceed * * * fifteen thousand dollars * * * ($15,000).

(b) Equity jurisdiction

(b) Each municipal and justice court shall have jurisdiction of cases in equity as follows:

(1) In all cases to try title to personal property when the amount involved is not more than * * * fifteen thousand dollars * * * ($15,000).

(2) In all cases when equity is pleaded as a defensive matter in any case otherwise properly pending in a municipal or justice court.

(3) To vacate a judgment or order of such municipal or justice court obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect.

(c) Liability

(c) In any action that is otherwise within its jurisdiction, the court may impose liability whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

§ 116.2 Jurisdiction

The small claims division shall have jurisdiction in actions:

(a) For recovery of money only where the amount of the demand does not exceed seven hundred fifty dollars ($750);

(b) To enforce payment of delinquent unsecured personal property taxes in an amount not to exceed seven hundred fifty dollars ($750), if the legality of the tax is not contested by the defendant;

(c) In unlawful detainer, after default in rent for residential property, where the term of tenancy is not greater than month to month and the amount claimed does not exceed seven hundred fifty dollars ($750)

(Added by Stats.1978, c. 1259, p. 3968, § 2.)

See Code of Civ. Proc. §187.

Asterisks * * * indicate deletions by amendment

Underline indicates changes or additions by amendment

Nancy Jewell Cross
1902 Palo Alto Way
Menlo Park, California 94025
415-854-6882

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FILED
MUNICIPAL COURT
SOUTHERN JUDICIAL DISTRICT
JAN 31980
REDWOOD CITY BRANCH
BY LORRAINE [illegible]
Deputy

SMALL CLAIMS COURT

Municipal Court of San Mateo County
Southern Judicial District
Redwood City Branch

NANCY JEWELL CROSS, Plaintiff and Appellant, v. MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY, Defendants and Appellees.	S.C. Number 60654 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NANCY JEWELL CROSS herewith appeals to the SUPREME COURT OF THE UNITED STATES pursuant to 28 U.S.C. Sections 1257(2) and (3), 2101(c), and 2106 from judgment(s) of the Sma Claims Court, a department of the Municipal Court of San Mateo County, California, Southern Judicial District, Redwood City Branch, entered September 28, 1979 and October 23, 1979 (letter refusing to set hearing on October 16, 1979 timely filed Motion to Vacate, Alter, and Amend Judgment).

January 3, 1980

Nancy Jewell Cross

Nancy Jewell Cross

Acknowledgment of Service

Service of a copy of the foregoing this third day of January 1980 at Redwood City, California is hereby acknowledged.

For Marvin Church Shirley Coughlin, Deputy Clerk

For Board of Supervisors of San Mateo County and San Mateo County M. L. Jakie
Deputy Clerk of the Board

Nancy Jewell Cross
1902 Palo Alto Way
Menlo Park
California 94025
415-854-6882

FILED
MUNICIPAL COURT
SOUTHERN JUDICIAL DISTRICT
OCT 16 1979
REDWOOD CITY BRANCH
BY LORRAINE HAMMER
Deputy

S M A L L C L A I M S C O U R T
Southern Judicial District
San Mateo County, State of California
REDWOOD CITY BRANCH

NANCY JEWELL CROSS, Plaintiff,

v.

MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY, Defendants.

S. C. Number 60654

MOTION TO VACATE, ALTER, AND AMEND JUDGMENT AND DECLARATION

Nancy Jewell Cross moves the Court to vacate judgment entered September 28, 1979, and to alter and amend it, and to set date for hearing of this motion.

This motion is made upon the following grounds:

1. The Small Claims Court, undeclared in instructions otherwise given to plaintiff by printed form, lacked jurisdiction of the action; and,

2. In any event, irregularities occurred in the consideration of the complaint and action by the judge acting which defeated due process of law and the substance of justice to which plaintiff is entitled by the United States Constitution, Article VI, Section 3 and Amendments I and XIV, and California Constitution, Article I.

This motion is made upon the record and such other papers, evidence, and argument as I invoke, adduce, or made in relation.

Albeit the lesser jurisdiction of Small Claims Court monetarily is recognized to have been not exceeded, that does not confer jurisdiction on Small Claims Court when neither Municipal Court nor Justice Court has jurisdiction for some other reason. The Small Claims Court is a division of a municipal or justice court, and the limits of jurisdiction of the municipal and justice courts must be read onto small claims courts. ~~Government Code~~ Code of Civil Procedure, Section 86, Jurisdiction, says

"(a) Each municipal and justice court shall have original jurisdiction of civil cases and proceedings as follows:
(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to fifteen thousand dollars ($15,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant." (Emphasis added.)

The hearing of this action was abruptly transferred on the day it was set for, to a visiting judge who had no opportunity prior to the time of hearing scheduled to prepare on the law with papers submitted days before particularly to enable consideration of the validity of a tax, impost, assessment, or toll. It was manifest that plaintiff contested the validity of a tax, impost, assessment, or toll imposed on her for ballot listing. Judge Trimble, to my frustration, announced over my objection that he would read not more than a single case report and none of those of the United States Supreme Court which I cited and urged. Robert Wayne Trimble was de facto proceeding by the actual limits of his jurisdiction as a justice court judge, but his entry of judgment on the merits denied me substantial justice and due process of law respecting the United States and California Constitutions.

Jurisdiction cannot be conferred by consent or inadvertence, and a void judgment may be set aside at any time.

This motion is made at my earliest opportunity after becoming informed of the limitations of jurisdiction prevaling.

In consideration of the limits of jurisdiction and actual proceedings, I ask, if the Small Claims Court now agrees that its jurisdiction was inadvertently exceeded, that the Court vacate the judgment on the merits because it is void for lack of jurisdiction, and dismiss the action without prejudice.

If the Small Claims Court does not agree that its jurisdiction was exceeded, I ask the Court to vacate the judgment as having been made without consideration required for compliance with due process of law and the constitutions otherwise, to read all the cases and other authorities cited, and render judgment for plaintiff. In this event, because it would be by another judge, I believe, I ask a new hearing.

I certify under penalty of perjury for any perjury that the foregoing statement is ture and correct. Nancy Jewell Cross

Nancy Jewell Cross

At Redwood City, CA on Oct. 16, 1979.

Service

I received a copy of this paper for Marvin Church, on

I received a copy of this paper for Board of Supervisors of San Mateo County, and County of San Mateo, on

MUNICIPAL COURT • SOUTHERN JUDICIAL DISTRICT

COUNTY OF SAN MATEO

Reply to
☐ SAN MATEO BRANCH
800 North Humboldt Street • San Mateo • California 94401
(415) 573-2618
☒ REDWOOD CITY BRANCH
750 Middlefield Road • Redwood City • California 94063
(415) 364-5600, Ext. 4[illegible]

RUSSELL M. WOODS
Clerk and Administrator

G

October 23, 1979

Ms. Nancy Jewell Cross
1902 Palo Alto Way
Menlo Park, CA. 94025

Dear Ms. Cross:

RE: S.C.60654 - NANCY JEWELL CROSS vs MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY and COUNTY OF SAN MATEO

Referring to your Motion to Vacate, Alter and Amend Judgment and Declaration in the above entitled matter which was filed by our Court on October 16, 1979, this is to advise that the Court has not calendared the Motion for hearing.

We have been advised by the Court that "there is no authority for such a motion on behalf of plaintiff. Plaintiff's remedy is to seek a Writ."

As you requested, and since a hearing date on the Motion will not be scheduled, the proposed Notice of Motion and the endorsed filed copies of the Motion to Vacate are being returned to you.

Very truly yours,

RUSSELL M. WOODS,
Clerk/Administrator

RMW:lh
Att:

By [illegible]
Deputy Clerk

Supreme Court, U.S.
FILED
FEB 3 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

NANCY JEWELL CROSS, Plaintiff and Appellee, v. MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY, Defendants and Appellees)	)	NO. 79-6050

APPEAL FROM THE
SMALL CLAIMS DIVISION, MUNICIPAL COURT,
SOUTHERN JUDICIAL DISTRICT,
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

MOTION TO DISMISS APPEAL

KEITH C. SORENSON, District Attorney
By: THOMAS F. CASEY, III
Assistant District Attorney
THOMAS DANIEL DALY
Deputy District Attorney
Hall of Justice and Records
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Attorneys for Defendants and Appellees
MARVIN CHURCH, BOARD OF SUPERVISORS
OF SAN MATEO COUNTY, and
SAN MATEO COUNTY

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Attorneys for Defendants and Appellees
MARVIN CHURCH, BOARD OF SUPERVISORS
OF SAN MATEO COUNTY, and
SAN MATEO COUNTY

IN THE SUPREME COURT OF THE UNITED STATES

NANCY JEWELL CROSS,

Plaintiff and Appellee,

v.

MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY,

Defendants and Appellees

NO. 79-6050

MOTION TO DISMISS APPEAL

Pursuant to Rule 16 of the Revised Rules of this Court, appellees-respondents MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY (hereinafter "the County") move the Court to dismiss this case on the following grounds:

1. The appeal should be dismissed for lack of jurisdiction because it was not filed within 90 days after the entry of judgment.

2. The appeal should be dismissed because it does not present a substantial federal question and the federal question sought to be reviewed was not properly raised.

STATEMENT OF THE CASE

On September 14, 1979, appellant NANCY JEWELL CROSS (hereinafter "Cross") filed a small claims action in the Municipal Court, Southern Judicial District, County of San Mateo, State of California, (NO. SC 60654). Cross sought to recover from the County the sum of $718.02 which included a $618.02 filing fee paid for obtaining nomination papers for the office of County Supervisor and $100.00 for unidentified "expenses". Judgment was entered in favor of the County on September 28, 1979. Cross thereafter attempted to file a motion to vacate, alter, and amend the judgment on October 16, 1979. On October 23, 1979, the Clerk of the Municipal Court advised Cross that the motion would not be calendared because there was no authority for such a motion.

Cross filed her notice of appeal on January 3, 1980. Jurisdiction is asserted under 28 U.S.C. Sections 1257(2), 1257(3), 2101(c), and 2106. Cross has filed a motion to proceed in forma pauperis pursuant to Rule 53 together with the necessary affidavit and her jurisdictional statement. The case was docketed on January 21, 1980.

STATEMENT OF FACTS

Cross was a candidate for the office of Member of the Board of Supervisors, County of San Mateo. A special election was held in the County on November 6, 1979 to fill a vacancy in that office.

Under California Elections Code Section 6553(c)[1], a filing fee of 2 percent of the annual salary for the office of County Supervisor must be paid to the County Clerk by each candidate in order to obtain nomination papers for that office. The filing fee in the present case was $618.02. However, under California Elections Code Section 6555, a candidate may submit a petition containing a prescribed number of registered voters in lieu of a filing fee. In addition, a candidate may submit a combination of such signatures and a pro rata portion of the filing fee in order to obtain nomination papers. California Elections Code Section 6555(b)(3). The number of signatures required to eliminate completely the filing fee in this case was 2,743.

[1]All provisions of the California Elections Code discussed herein are set forth in full in the appendix.

Forms for securing signatures must be made available commencing 45 days before the first day for circulating nomination papers and must be filed not less than 15 days before the time for filing nomination papers. California Elections Code Section 6555(b). In this case, the forms were made available 158 days before the election, or on June 1, 1979, and were required to be filed 103 days before the election, or by July 26, 1979. See California Elections Code Sections 6490 and 6555(b). The record before the Small Claims Court indicates that while Cross obtained the forms for securing signatures in lieu of a filing fee, she never filed them but chose instead to pay the filing fee. She then commenced an action in small claims court to recover the filing fee of $618.02 (plus $100 in unidentified "expenses"). Under California law, the judgment of the small claims court in favor of the County was conclusive upon Cross. California Code of Civil Procedure Section 117.8(a). She has appealed directly to this Court from that judgment, presumably because the small claims judgment was a final judgment.

ARGUMENT

1. The appeal should be dismissed for lack of jurisdiction because it was not filed within 90 days after the entry of judgment.

Rule 16(a) of the Revised Rules of this Court authorizes a motion to dismiss any appeal on the ground that the appeal is not within the jurisdiction of this Court, because not taken in conformity to statute or to these rules. Rule 11(3) provides that an appeal shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the appropriate court within the time allowed by law for taking such appeal. Under 28 U.S.C. 2101(c), any appeal intended to bring any judgment in a civil action before this Court for review [other than those actions specified in 28 U.S.C. 2101(a) and (b)] must be taken within 90 days after the entry of such judgment.

Here, judgment was entered in the small claims court on September 28, 1979. Cross did not file her notice of appeal with the court until January 3, 1980. This was more than 90 days after the entry of judgment and, therefore, Cross's appeal is not timely. Hence, this appeal should be dismissed for lack of jurisdiction under Rule 16(a).

The fact that Cross attempted to file a "Motion to Vacate Judgment" after the entry of judgment does not mean that the ninety-day period commenced running at some later date such as the day the clerk of the court advised Cross that her motion would not be calendared. Proceedings in the small claims division of the California Municipal Courts are governed by the provisions of California Code of Civil Procedure Sections 116 through 117.8. These sections do not authorize a plaintiff in a small claims action to make a motion to vacate the judgment, nor is there any authority in these sections for the court to entertain such a motion. The judgment of the small claims court is conclusive upon the plaintiff. California Code of Civil Procedure Section 117.8(a). There was no authority for Cross's motion, and the filing of that motion should not toll the running of the ninety-day period within which she is required to file her notice of appeal.

This Court has stated that the filing of an untimely petition for rehearing which is not entertained or considered on its merits cannot operate to extend the time for appeal. Bernards v. Johnson (1941), 314 U.S. 19, 31; 62 S. Ct. 30, 86 L. Ed. 11; Bowman v. Loperena (1940), 311 U.S. 262, 266, 61 S. Ct. 201, 85 L. Ed. 177; Wayne Gas Company v. Owens Company (1936), 300 U.S. 131, 137, 57 S. Ct. 382, 81 L. Ed. 557. While these cases involved appeals from district courts sitting in bankruptcy, the principle is equally applicable here. Cross's motion to vacate the judgment was never heard on the merits since the small claims

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CALIFORNIA

court concluded there was no authority for such a motion and never scheduled a hearing. Cross should not be allowed to avoid the requirement of filing her notice of appeal within ninety days from the entry of judgment merely because she filed a motion to vacate the judgment for which there was no authority and on which no hearing was held.

Cross failed to file her notice of appeal within the ninety-day period prescribed by 28 U.S.C. 2101(c) and her appeal should be dismissed for lack of jurisdiction.

2. The appeal should be dismissed because it does not present a substantial federal question and the federal question sought to be reviewed was not properly raised.

The County has considerable difficulty in determining the basis for Cross's appeal in this case. Apparently, Cross contends that California Elections Code Sections 6553 and 6555 are unconstitutional. These sections require candidates for elective offices to pay certain filing fees in order to obtain access to the ballot. However, a candidate may submit a petition containing a specified number of signatures of registered voters in lieu of a filing fee or a combination of such signatures and a pro rata portion of the filing fee.

In Lubin v. Parrish (1974), 415 U.S. 709, this Court held that the California filing fee system in effect at that time was unconstitutional because the law provided no reasonable alternative which would enable an indigent person who was a serious candidate to obtain access to the ballot. However, this Court also recognized the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support. The Court noted that there are obvious and well-known means of testing the "seriousness" of a candidacy other than by payment of a filing fee and expressly stated: " . . . a candidate who establishes that he cannot pay the filing fee

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CALIFORNIA

required for a place on the primary ballot may be required to demonstrate the 'seriousness' of his candidacy by persuading a substantial number of voters to sign a petition in his behalf." (415 U.S. at 718).

In direct response to Lubin, the California Legislature amended the Elections Code to provide that a candidate may submit a petition containing a specified number of signatures of registered voters in lieu of a filing fee. California Elections Code Section 6555. While Cross has not set out verbatim the text of this statute in her jurisdictional statement or in an appendix as required by Rule 15(b)(v), presumably her attack is directed against the constitutionality of the California filing fee procedures of which Section 6555 is an integral part. Cross refers to a number of cases from various jurisdictions, the most relevant being the Lubin case, supra, without any discussion of those cases and their applicability in the instant case. She has apparently included in the appendix copies of the original claim filed in the small claims court and the exhibits to her claim. These materials concern claims by candidates for the refund of filing fees which were paid under the old California filing fee system declared unconstitutional in Lubin. It appears that Cross is either unaware of or chooses to ignore the fact that the California Elections Code was amended following the Lubin case to provide an alternative method for candidates to obtain access to the ballot other than by paying the filing fee.

The constitutionality of California's present filing fee system whereby a candidate may pay the filing fee or submit signatures in lieu of the fee has not yet been ruled on by this Court or the California Supreme Court. However, in Cross v. Fong Eu, 430 F. Supp. 1036 (1977), a California Federal District Court addressed the validity of the new California filing fee

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CALIFORNIA

system in another action brought by Cross. In that case, Cross sought access to the ballot as a candidate for the office of United States Senator. The filing fee for that office was $892.50. In lieu of the fee, Cross could have submitted a petition with 10,000 signatures. The California District Court held that the 10,000 requirement was a reasonable alternative to the filing fee requirement and that, hence, Cross had no constitutional claim against the filing fee under Lubin. And in Bill v. Williams, 70 Cal. App. 3d 531, 139 Cal. Rptr. 19 (1977), a California State Court of Appeal held that a requirement of gathering 1,728 signatures in 55 days from a pool of 25,975 qualified signers did not, standing alone, constitute an unreasonably burdensome or impractical undertaking for a reasonably diligent county supervisorial candidate.

Here, Cross has made no allegations concerning her inability to pay the filing fee for the office of Supervisor and, in fact, she actually paid the fee. She does not allege that she made any attempt whatsoever to gather the necessary signatures that would excuse the filing fee. There is no indication that other candidates who were unable to pay the filing fee or chose not to do so were unable to gather the necessary signatures. Cross does not claim that the period for gathering signatures was excessively short or that the number of signatures required was excessively high.

In short, Cross has failed to allege any facts or even to argue that the California filing fee system fails to provide a reasonable alternative for indigent persons who desire to obtain access to the ballot but who cannot pay the filing fee. The mere broad assertion that the California statutes are unconstitutional without any discussion of the cases cited or the nature and extent of the signature requirements is not a proper method of raising and presenting a federal question.

The County submits that this appeal should be dismissed because it does not present a substantial federal question and the federal question sought to be reviewed has not been properly raised.

CONCLUSION

For the above reasons, the County submits that this appeal should be dismissed because it was not filed within 90 days after the entry of judgment and because it does not present a substantial federal question.

Dated: APR 1 - 1980

KEITH C. SORENSON, District Attorney

By _____
THOMAS F. CASEY, III
Assistant District Attorney

Attorneys for Defendants and Appellees MARVIN CHURCH, BOARD OF SUPERVISORS OF SAN MATEO COUNTY, and SAN MATEO COUNTY

KEITH C. SORENSON
DISTRICT ATTORNEY
SAN MATEO COUNTY
CALIFORNIA

APPENDIX

California Elections Code Section 6490 provides:

DECLARATION OF CANDIDACY. No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county clerk not less than 88 and not more than 113 days prior to the direct primary:

(a) Declaration of candidacy pursuant to Section 6491.

(b) Nomination papers signed by signers pursuant to Section 6494.

The county clerk shall not accept the nomination documents after 5 p.m. on the 88th day prior to the direct primary. Upon the receipt of an executed nomination document, the county clerk shall give the person delivering such document a receipt, properly dated, indicating that the document was delivered to the county clerk.

California Elections Code Section 6553 provides:

AMOUNT OF FEE. The filing fee to be paid to the county clerk for filing a declaration of candidacy for an office to be voted for wholly within one county other than a legislative or congressional office shall be as follows:

(a) No filing fee is required from any candidate for an office for which no fixed compensation is payable, or for which the annual salary is two thousand five hundred dollars ($2,500) or less.

(b) A filing fee of 1 percent of the annual salary of the office shall be paid to the county clerk by each candidate for a judicial office or for the office of district attorney.

(c) A filing fee of 2 percent of the annual salary of the office shall be paid to the county clerk by each candidate for other county offices.

California Elections Code Section 6554 provides:

PAYMENT OF FEES. The filing fees for all candidates required to file declarations of intention to become a candidate shall be paid at the time such declarations are filed with the county clerk. The filing fees for all other candidates shall be paid at the time the candidates obtain their nomination forms from the county clerk. The county clerk shall not accept any papers unless satisfactory evidence is given to the county clerk or to the registrar of voters that such fee has been paid at the time required by this section, or unless satisfactory evidence is given to the county clerk or to the registrar of voters that such fee has been paid at the time of the declaration of candidacy in another county. The county clerk shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. All filing fees received by the Secretary of State and county clerks are nonrefundable.

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California Elections Code Section 6555 provides:

IN-LIEU-FILING-FEE PETITIONS.

(a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

(1) For the office of California State Assembly, 1,500 signatures.

(2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.

(3) For candidates running for statewide office, 10,000 signatures.

(4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(6) Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he seeks nomination, or 150 signatures, whichever is less.

(7) A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition.

(b) Each clerk shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. Such forms shall be made available commencing 45 days before the first day for circulating nomination papers. No other form except the form furnished by the county clerk shall be used to secure signatures. The substitution of signatures for fees shall be subject to the following provisions:

(1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he is eligible to vote.

(2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

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SAN MATEO COUNTY
CALIFORNIA

(3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of such signatures and pro rata filing fee, the clerk shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the clerk shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee, to cover the deficiency.

(4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the county clerk in the county in which the petition was circulated. The county clerk shall at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the county clerks of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall have the qualifications required under Section 42.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 607.

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KEITH C. SORENSON
DISTRICT ATTORNEY
SAN MATEO COUNTY
CALIFORNIA

PROOF OF SERVICE BY MAIL

ACTION NO. 79-6050

I am a citizen of the United States and a resident of the County of San Mateo, State of California. I am over the age of eighteen years and not a party to the within action. My business address is Hall of Justice and Records, Redwood City, California.

On April 1 , 1980 I served the within

MOTION TO DISMISS APPEAL

on the following parties

in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States post office mail box at Redwood City, California, addressed as follows:

NANCY JEWELL CROSS
1902 Palo Alto Way
Menlo Park, California 94025

I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 1 , 1980.

David E. Johnson